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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,185	02/04/2004	Jude S. Sauer	LS-006CV	4686
7590	02/04/2008	Kenneth J. LuKacher, Esq. South Winton Court Suite 204 3136 Winton Road South Rochester, NY 14623	EXAMINER NGUYEN, VI X	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 02/04/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/772,185	SAUER, JUDE S.
	<b>Examiner</b>	<b>Art Unit</b>
	Victor X. Nguyen	3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 and 15-26 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 8,9 and 20-24 is/are allowed.
- 6) Claim(s) 1-7,10,15-19,25-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
  - 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
  - 3) Information Disclosure Statement(s) (PTO/SB/08)
 

Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)
 

Paper No(s)/Mail Date \_\_\_\_\_.
  - 5) Notice of Informal Patent Application
  - 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6,10,15-19,25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens (5,078,722).

Stevens discloses in figures 1-2, a device is used to cut tissue having the limitations as recited in the above listed claim, including: a housing 32, a shaft 10 extends from the housing to a distal end of the instrument, where the shaft has an opening 20 at the distal end, a guide tube 14 extends from the distal end, where a path is through the guide tube for extending a guidewire 16, where means for longitudinally cutting tissue that has a blade 52 extendable and retractable through the opening of the shaft, where the guide tube extends through the opening of the shaft beyond the distal end of the blade, when retracted to define a path along which the blade is extendable and retractable at best seen in fig. 1, and where the instrument further has a blade shuttle at 52a attached to the blade, and where the guidewire 16 extends along the path for extending the guidewire, and where the guide tube is stationary with the shaft, and where the blade has a sharp edge to allow the edge of the blade to cut tissue.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens (5,078,722) in view of Sauer et al (5,562694). Stevens discloses the invention substantially as claimed. Stevens is silent regarding a pivotal actuator member at the housing with one or more rods.

Sauer discloses such a pivotal actuator member 118 at the housing with one or more rods 252,254 (figures 2-3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stevens by making the device has a pivotal actuator member at the housing with one or more rods as taught by Sauer to allow prediction result of adding an additional actuator that would enhance the extension/retraction of the blade efficiently. As to claim 7, Sauer teaches the shaft is extendable through an endoscope 400.

#### *Allowable Subject Matter*

3. Claims 8-9 and 20-24 are allowed over the art of records.

#### *Response to Arguments*

4. Applicant's arguments with respect to claims 1 and 25 have been considered but are moot in view of the new ground(s) of rejection. Applicant is asked to please refer to the modified prior art rejection above where examiner address applicant's concerns regarding prior art rejection.

#### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734

VN VN  
1/30/2008

  
MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER